17. Your Committee recommend that the Bill be passed in its present form.

B. H. ELLIS.
S. MANSFIELD.
MUNGULDASS NUTHOOBHOY.

2nd October 1868.

The Honourable Mr. Ellis' observations on the Bill.

The Honourable Mr. Ellis said that as the provisions of this Bill had been very much modified in Committee, he proposed that an early day should not be fixed for the further consideration of the Bill, with the view that the modifications which had been made, might become fully known, and that the Bill in its present form might have a sufficiently wide circulation. But as there would be this delay, he would beg permission, in stating the course which he proposed to pursue, to offer a few observations upon certain points in respect to which considerable misapprehension appeared to exist; and he would do so, without troubling the Council with those points that would more properly be dealt with on the occasion of the second reading. But as there would be some delay, he would merely submit a few remarks in reference to the misunderstanding as to the intentions of the framers of the Bill. In the first place there had been some misapprehension as to the principle of the Bill, but it was hardly necessary to deal with that now, as a proper opportunity for explaining what that principle really was, would be afforded him in moving the second reading of the Bill. But in one very prominent point of detail, apprehension had been excited in the minds of the people of the City of Bombay, lest the provisions of the Bill should be made applicable to them. Now he would mention that it never was intended to make the Bill applicable to Bombay, for in the first place, there existed already under the Bombay Municipal Act of 1865, ample powers for carrying out the field portion of the survey of the City of Bombay, and in the second place, the Regulations on which this Bill was based were not applicable to that city. It was never intended therefore to apply this Bill to Bombay; but in order to do away with the misapprehension on that point, the Select Committee had inserted a clause in the Bill, declaring specifically that the Act should not apply to the City of Bombay. Then again there was some misunderstanding as to the second Section of the Bill, which as originally worded was one intended solely for the advantage of the holders of lands in towns and cities, but the Section was misconstrued so as to lead to the belief that the object was to

give the Government power to levy assessments where no assessments had been levied before. But this was not the case. The clause was framed in order that when assessment was leviable under other Acts, the Government should have the power to fix such assessment for a longer period than was permissible under those other Acts. He might mention that under the Bombay Survey and Settlement Act, settlements could be fixed for only thirty years, but it was obvious that in cities and towns the term should be longer. He need hardly state that there was not the slightest intention of using this section to impose any new assessment; but the Committtee had made an alteration in the Bill that he hoped would do away with such an impression. Then again there had been a misconception as to the use of the word "occupant" instead of "owner." The former word was used because the survey dealt with occupancy—not with ownership. For this, and for no other reason, had the word "occupant" been used. He would refer to the wording of the Sunnuds, from which it would be seen that Government admitted that property in Town lands was private property. But as there was no objection to insert the word "owner" the draft Bill had been altered accordingly. There was also a misconception as to the Sunnuds themselves, and it had been said that the Government were professing to issue documents conferring a valid title when no such title was conferred. Now it never was pretended that sunnuds issued under the Act would confer an absolute title, but what the sunnud would do was this; it would give a title against Government; and in the next place, the sunnud, in course of years, became the very best evidence that could be produced, of possession and occupancy at the time when the survey was made, and looking at the value of a prescriptive right he thought it would be no small thing to give the means of a proof of prescription. Then again there was a misconception in the matter of encroachments on the public roadway, for which provision had been made in Section VII. of the Bill as originally presented, but this, he (Mr. Ellis) must admit was owing rather to the fault of those in charge of the Bill than to that of the public, because on account of a clerical error (by which Section III. was referred to in the original Bill, instead of Section IV.) it had appeared that the right of resumption was unlimited in cases of encroachment. But as this error had been pointed out in the report he would not further allude to it. Then there had been some agitation as to the provisions of Section VIII. and the right of survey officers to enter on lands and premises for the purposes of survey. There had been great exaggeration and he thought it was pretty well admitted now, that no great danger was to be apprehended from the powers given under this section; the right was one which very seldom need be exercised; still it was necessary that

such a power should be given to the officers of Government, because the want of it in one or two cases might vitiate the work of the survey. The Committee had secured the right but had placed such restrictions on its exercise as would prevent any interference with the social customs and religious prejudices of the people. He hoped, therefore, that those who had raised, or countenanced the agitation, would now take steps to re-assure the public mind and convince those who had been frightened, that their alarm was groundless and without foundation. There was one other point of considerable importance to which he would refer. It was supposed that the Bill was devised with one principal object—that of depriving people of a remedy in the civil courts in respect to land of which they might be deprived by the Collector, or of damages for wrong which they might suffer by his decisions. The fact was that the only cases in which, under the draft Bill, remedy under the Jurisdiction of the Civil Courts would have been barred were those occurring under Acts II. and VII. of 1863, a very limited class of cases. But for all decisions under Act I. of 1865 and for all the new provisions of this draft Bill, no such provision was proposed. On the contrary, the sections of Acts II. and VII. which gave such power had been expressly omitted, for Sections XIII. and XXVIII. of those Acts respectively, which prevented the Civil Courts from questioning the Collector's decisions, were not contained in Section XIV. of the draft Bill. That section merely provided that officers of Government should not be liable to be sued for actions done under this Bill *bonâ fide* in the discharge of their duty: but there was nothing to prevent any officer from being sued for misconduct, or for acts caused by gross negligence on this part. That was to say if the Collector were to do something which was grossly and obviously wrong, he would not be protected by pleading that he had acted *bonâ fide*; nor, on the other hand, would there be anything to prevent an aggrieved individual from taking proceedings against Government on account of any wrong or damages that he had been subjected to by an officer of Government. But in order to do away with the objection the Select Committee had removed that provision in the original Bill. There was therefore no provision in the Bill as presented now, which could prevent the civil courts from taking cognizance of the acts of the Collector in respect to the title to any town or city lands. He would not detain the Council by going into all the sections of the Bill, because the opportunity for so doing would be offered on another occasion; and he had troubled the Council with these remarks solely as to the misapprehensions which had existed, but which he trusted would now be removed. He would have no other opportunity, as most of the sections in relation to which the misunderstanding had arisen, had been either entirely removed from the Bill or now

appeared under a different form. He might add that besides the petitions mentioned in the margin of the Select Committee's report, there were others sent in the vernacular, which, being unaccompanied with translations required by the rules of the Council, ought to have been returned; but as the Committee were desirous of having all the information possible on the subject, they had the petitions translated for their own information, though of course those petitions could not be presented to the Council. In conclusion he would beg to say that he should be prepared to proceed with the Bill at the first meeting after the Dewali holidays, which would afford ample time to consider the measure in its amended form.

The Council met at Bombay on Tuesday, the 3rd November 1868, at noon.

The Honourable Mr. Ellis moves the second reading of the Act for City Surveys and amendment of Bombay Survey and Settlement Act, 1868.

The Honourable Mr. ELLIS, in moving the second reading of Bill No. 3 of 1868, "A Bill to make further provision regarding the application of (Bombay) Act No. I. of 1865 to Towns and Cities, and to restrict the application of (Bombay) Acts Nos. II. and VII. of 1863 in Towns and Cities, and otherwise to amend (Bombay) Act No. I. of 1865," said that this Bill had been already fully discussed by the public outside, and by the members of the Council upon the occasion of the first reading, and also in Select Committee, where the Committee had the advantage of hearing a gentleman who appeared upon the part of "the Bombay Association," and discussed the Bill in all its details. This being the case, it was not required of him now to detain the Council at very great length in explaining the provisions of the Bill: but there were some points upon which it perhaps might be expected that he should offer explanation. It had been asserted by those who at the outset opposed the Bill, that an entirely novel principle was being asserted when it was assumed in this Bill that Government had the right of taxing and deriving revenue from lands within the limits of towns and cities. Now he (Mr. ELLIS) did not mean to say for a moment that there were not many lands in towns and cities, a very large majority in fact of lands in towns and cities, in respect to which the Government, at present, had no right whatever to claim or obtain assessment or land revenue. But he would maintain that this right, as against Government, was not an inherent right, but a right which had been acquired in the same way as in other cases, either by grant or by prescription derived from long possession. He need not go back to the days